

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

ORDER  
11-CR-57-A

BERGAL L. MITCHELL,

Defendant.

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This case was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1). Defendant filed a motion to suppress statements he made September 10, 2008 on the grounds that he was subjected to a custodial interrogation without being given warnings due under *Miranda v. Arizona*, 384 U.S. 436 (1966), and that his statements were involuntary.

On December 28, 2012, Magistrate Judge McCarthy filed a Report and Recommendation (Dkt. No. 120) recommending the Court deny defendant's motion to suppress oral statements. Defendant filed objections to the Report and Recommendation January 25, 2013. The government filed a response on February 15, 2013. Defendant filed a reply March 7, 2013. Oral argument on the objections was held on August 7, 2013.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the

submissions of the parties and hearing oral argument, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendant's motion to suppress his statements is denied in all respects. The parties shall appear November 25, 2013 at 12:30 p.m. to set a date for trial.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: November 22, 2013